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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 SCOTT MILLER, MICHAEL
12 SPAULDING,

13 Plaintiffs,

14 v.

15 KSHAMA SAWANT,

16 Defendant.

17 CASE NO. C18-506 MJP

18 ORDER GRANTING MOTION
19 FOR PARTIAL JUDGMENT ON
20 THE PLEADINGS

21 This matter comes before the Court on Defendant's Motion for Partial Judgment on the
22 Pleadings or, Alternatively, Partial Summary Judgment. (Dkt. No. 95.) Having reviewed the
23 Motion, Plaintiffs' Response (Dkt. No. 96), the Reply (Dkt. No. 97), and all supporting
24 materials, the Court GRANTS the Motion and DISMISSES Plaintiffs' "federal defamation"
claim.

BACKGROUND

A. Factual Background

Plaintiffs Scott Miller and Michael Spaulding are Seattle Police Officers who shot and killed Che Taylor while trying to arrest him in February 2016. (Third Amended Complaint ¶¶ 2-3, 20 (Dkt. No. 52).) Several days later, Defendant Seattle City Councilmember Kshama Sawant spoke at a protest during which she stated:

This is dramatic racial injustice, in this city and everywhere in this nation. The brutal murder of Che Taylor, just a blatant murder at the hands of the police, show how urgently we need to keep building our movement for basic human rights for black people and brown people. I want to let you know that I stand here both as an elected official, as a brown person, as an immigrant woman of color, and as someone who has been in solidarity with the Black Lives Matter movement, and our movement for racial, economic and social justice....

And I am here as an elected official because I am completely committed, unambiguously committed, to holding the Seattle Police Department accountable for their reprehensible actions, individual actions. We need justice on the individual actions and we need to turn the tide on the systematic police brutality and racial profiling.

(FAC ¶ 37 (emphasis omitted).)

Roughly a year after the shooting, the King County prosecutor convened an inquest overseen by a judge and contested by a lawyer representing the family of Che Taylor. (TAC ¶ 50-51.) An impartial jury cleared Plaintiffs of wrongdoing. (*Id.* ¶ 52.) The City's Force Investigation Team (FIT), in conjunction with the Office of Professional Accountability (OPA), performed a separate, independent investigation of the incident. (*Id.* ¶ 53.) Plaintiffs were again cleared of wrongdoing. (*Id.* ¶ 54.) The FIT's findings were independently reviewed by the City's Firearms Review Board (FRB). (*Id.* ¶ 55.) The OPA again participated and Plaintiffs were cleared of wrongdoing. (*Id.* ¶¶ 55-56.) The Seattle Police Department also examined the incident and confirmed that Plaintiffs' conduct was within policy. (*Id.* ¶ 57.) Plaintiffs were not

1 terminated and they identify no demotions or adverse employment actions taken as a result of
 2 Sawant's remarks.

3 In June 2017, Sawant made the following remarks after Seattle Police officers shot and
 4 killed Charleena Lyles, a pregnant, Black woman:

5 I join the NAACP in demanding such a transparent public hearing. When Che Taylor was
 6 murdered by the police, the community and I demanded such a hearing from the Mayor
 7 and from Council member Gonzalez whose committee oversees the SPD, but neither the
 8 Mayor nor Council member Gonzalez responded. In...in light of the horrific killing of
 9 Charleena now I again urge...I publicly urge the City Council to hold such a hearing. I
 10 have also earlier today sent a number of important questions to the SPD.

11 . . . We demand that the City of Seattle appoint an independent committee to review this
 12 case . . . with . . . with full public accountability. We cannot rely on the existing process
 13 to determine why Charleena was killed because that process has failed Che Taylor. . . that
 14 process has failed every person who was killed at the hands of the Police. Sisters and
 15 brothers, I will add one more thing for our movement that is standing with Charleena to
 16 think about, a deeply unequal society such as ours also implies that the lives of poor and
 17 low-income people, black and brown people, homeless people, those who have mental
 18 health issues and challenges . . . the system treats our lives as expendable.

19 (TAC ¶ 47.)

20 Plaintiffs allege that Sawant's comments caused a "political firestorm" that "turned [the
 21 officers' lives] upside down." (TAC ¶ 60.) Plaintiffs assert that the "fairness of the inquest
 22 hearing was implicated by the defamat[ory]" statements. (Id. ¶ 61.) Plaintiffs allege that
 23 Plaintiffs were "publicly berated and chastised" and that "[b]eing called a racist and murderer
 24 directly impacted their careers, which were stymied." (Id. ¶¶ 62-63.) But Plaintiffs do not allege
 what the impact was or how their careers were stymied. Plaintiffs claim "their families
 suffer[ed]" and Plaintiff Miller "whose children attended [school(s) within] the Seattle School
 District, had to move." (Id. ¶ 64.) And without any specificity, Plaintiffs assert that "[t]he
 damage has been far-reaching, extending throughout King County and well-beyond." (Id. ¶ 66.)

B. Procedural Background

Plaintiffs' Third Amended Complaint asserts state law defamation and outrage claims, as well as a "federal defamation" claim against Sawant. (TAC ¶¶ 67-87.) The only claim at issue in Sawant's Motion is Plaintiffs' "federal defamation" claim, which the Court has previously explained can only be pursued under 42 U.S.C. § 1983. (Order Denying Motion to Dismiss at 3 (Dkt. No. 92).) That is because there is no federal common law or federal statutory cause of action for defamation. (Order to Show Cause at 2 (Dkt. No. 88).)

Plaintiffs do not specify whether their Section 1983 claims are against Sawant in her personal capacity as a Councilmember or in her official capacity as a Councilmember. And although Plaintiffs originally sued the City of Seattle, they voluntarily dismissed those claims. (TAC ¶ 8.) This is relevant to determining what kind of Section 1983 claims are at issue.

ANALYSIS

A. Legal Standard

Federal Rule of Civil Procedure 12(c) states that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). “A judgment on the pleadings is properly granted when, taking all the allegations in the pleading as true, the moving party is entitled to judgment as a matter of law.” San Francisco Apartment Ass’n v. City & Cnty. of San Francisco, 881 F.3d 1169, 1175 (9th Cir. 2018) (citation and quotation omitted). “Analysis under Rule 12(c) is substantially identical to analysis under Rule 12(b)(6) because, under both rules, a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy.” See Chavez v. United States, 683 F.3d 1102, 1008 (9th Cir. 2012) (citation and quotation omitted). On a motion to dismiss under Rule 12(b)(6), a court must assess whether the complaint “contain[s] sufficient factual matter,

1 accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556
 2 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Mere
 3 conclusory statements in a complaint and “formulaic recitation[s] of the elements of a cause of
 4 action” are not sufficient. Twombly, 550 U.S. at 555.

5 **B. The Section 1983 Claim is Asserted Against Sawant in Her Personal Capacity**

6 The first question Sawant’s Motion poses is whether she is sued in her personal or
 7 official capacity—a question left unanswered in the Third Amended Complaint. This impacts the
 8 Court’s analysis of the adequacy of allegations supporting Plaintiffs’ Section 1983 claim. The
 9 Court finds that Sawant has been sued in her personal capacity.

10 The Court briefly reviews the prima facie elements of the claim and then the distinction
 11 between personal and official capacity suits. “Traditionally, the requirements for relief under [§]
 12 1983 have been articulated as: (1) a violation of rights protected by the Constitution or created by
 13 federal statute, (2) proximately caused (3) by conduct of a ‘person’ (4) acting under color of state
 14 law.” Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). When a state actor is sued, the
 15 question remains whether they are sued in their personal or official capacity. “Personal-capacity
 16 suits seek to impose personal liability upon a government official for actions [the official] takes
 17 under color of state law.” Kentucky v. Graham, 473 U.S. 159, 165 (1985). “Official-capacity
 18 suits, in contrast, ‘generally represent only another way of pleading an action against an entity of
 19 which an officer is an agent.’” Id. at 165-66 (quoting Monell v. New York City Dep’t of Soc.
 20 Servs., 436 U.S. 658, 690, n.55 (1978)). “[W]hen a plaintiff sues a defendant for damages, there
 21 is a presumption that he is seeking damages against the defendant in his personal capacity.”
 22 Mitchell v. Washington, 818 F.3d 436, 442 (9th Cir. 2016). “[T]o establish personal liability in a
 23 § 1983 action, it is enough to show that the official, acting under color of state law, caused the
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1 deprivation of a federal right.” Kentucky, 473 U.S. at 166. But an official sued in her personal
 2 capacity may be able to establish immunity from claims for damages. Id. at 166–67.

3 Here, there is no real contest that Sawant is sued in her personal capacity. Because
 4 Plaintiffs seek damages from Sawant, there exists a presumption she is sued in her personal
 5 capacity. See Mitchell, 818 F.3d at 442. Plaintiffs offer no rebuttal. And because Plaintiffs have
 6 not sued the City of Seattle, they would be unable to obtain damages from Sawant if she was
 7 sued in her official capacity. In their Opposition, Plaintiffs oddly argue that Sawant is sued “both
 8 as ‘an elected official’ and in her individual capacity.” (Opp. at 6. (Dkt. No. 96).) But Sawant
 9 cannot be sued under Section 1983 in her “individual capacity” (outside of her role as a
 10 councilmember) because her actions would then not be taken under “color of state law.” See
 11 Crumpton, 947 F.2d at 1420. Notwithstanding Plaintiffs’ self-defeating argument, the Court
 12 accepts the well-pleaded allegations as true that Sawant was acting in her personal capacity as a
 13 councilmember (and state actor). See S.F. Apartment, 881 F.3d at 1175.

14 **C. Plaintiffs Fail to State a Defamation Claim Under Section 1983**

15 To state a claim for defamation under Section 1983, Plaintiffs must allege “stigma plus”
 16 the deprivation of a “liberty” or “property” interest protected by the Due Process Clause. See
 17 Paul v. Davis, 424 U.S. 693, 712 (1976). “[D]ue process protections apply only if a plaintiff is
 18 subjected to “‘stigma plus’; i.e., if the state makes a charge against [a plaintiff] that might
 19 seriously damage his standing and associations in the community,’ and ‘1) the accuracy of the
 20 charge is contested, 2) there is some public disclosure of the charge, and 3) it is made in
 21 connection with the termination of employment or the alteration of some right or status
 22 recognized by state law.’” Wenger v. Monroe, 282 F.3d 1068, 1074 (9th Cir. 2002), as amended
 23 on denial of reh'g and reh'g en banc (Apr. 17, 2002) (quoting Llamas v. Butte Community

1 | College Dist., 238 F.3d 1123, 1129 (9th Cir. 2001)). “[I]njury to reputation standing alone does
 2 | not violate the Due Process Clause of the Fourteenth Amendment[.]” Id. 282 F.3d at 1076.
 3 | That’s because “the interest in reputation . . . is neither ‘liberty’ nor ‘property’ guaranteed against
 4 | state deprivation without due process of law.” Paul, 424 U.S. at 712.

5 Plaintiffs’ Section 1983 defamation claim fails because it lacks an alleged deprivation of
 6 | a right protected by the Due Process Clause—the “stigma plus.” The Court reviews the reasons.

7 First, neither officer is alleged to have been disciplined or terminated from employment
 8 | as a result of the Sawant’s remarks. See Wenger, 282 F.3d at 1074. Just the opposite, both were
 9 | cleared through the inquest convened by the King County prosecutor, and through the reviews
 10 | conducted by the OPA, FIT, FRB, and Seattle Police Department. (TAC ¶¶ 50-57.) And although
 11 | Plaintiffs allege that “[t]he fairness of the inquest hearing was implicated by the defamation,”
 12 | (TAC ¶ 61), they affirmatively allege that they were cleared by an “impartial jury” (TAC ¶ 52).
 13 | This undermines any claim that the alleged defamation was in connection with a termination or
 14 | alteration in their employment rights. See Wenger, 282 F.3d at 1074; (Opp. at 8 (citing this same
 15 | standard)). In their opposition, Plaintiffs claim “they were forced to undergo a ‘reopening’ of
 16 | sorts of the prior investigations into the shooting” and there was a “threat[] to their careers . . . if
 17 | they did not cooperate fully.” (Opp. at 8-9.) These new allegations are not supported by any
 18 | declaration and are not included in the Third Amended Complaint. They are therefore not
 19 | properly considered on the Motion for Judgment on the Pleadings. See S.F. Apartment, 881 F.3d
 20 | at 1175. But even if the Court considers these allegations, they fail to show the deprivation of a
 21 | liberty or property interest. They merely confirm that Plaintiffs remained employed. And as
 22 | elsewhere alleged, the investigations cleared them of wrongdoing. Similarly, Plaintiffs have not
 23 | provided any factual support for their loose suggestion that Sawant’s remarks “stymied” their
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1 careers. (TAC ¶ 62.) There are no facts to support this allegation and insufficient detail to
 2 conclude that it shows an alteration in a protected right.

3 Second, Plaintiffs fail to identify allegations sufficient to support the theory advanced in
 4 their Opposition that Sawant's remarks interfered with their "constitutional right of association
 5 and family integrity." (Opp. at 8-9 (citing Roberts v. United States Jaycees, 468 U.S. 609, 617-18
 6 (1984).) The Court reviews the rights independently.

7 Plaintiffs fall short of identifying and articulating an injury to their right of association.
 8 The Supreme Court has recognized "two distinct" theories of how the First Amendment protects
 9 the right of association. Roberts, 468 U.S. at 617. "In one line of decisions, the Court has
 10 concluded that choices to enter into and maintain certain intimate human relationships must be
 11 secured against undue intrusion by the State because of the role of such relationships in
 12 safeguarding the individual freedom that is central to our constitutional scheme." Id. at 617-18.
 13 "In another set of decisions, the Court has recognized a right to associate for the purpose of
 14 engaging in those activities protected by the First Amendment—speech, assembly, petition for
 15 the redress of grievances, and the exercise of religion." Id. at 618. Plaintiffs here allege that
 16 Sawant's comments have damaged their reputations, "turned [their lives] upside down," caused
 17 their "families [to] suffer," and Plaintiff Miller "had to move" and transfer his children out of the
 18 Seattle School District. (TAC ¶¶ 60-66.) But Plaintiffs fail to identify or explain how these
 19 alleged acts show an injury to the right of association. There are no allegations that Plaintiffs
 20 were unable "to enter into or maintain intimate human relationships." See Roberts, 468 U.S. at
 21 617-18. And these allegations do not show that they were unable to speak, assemble, exercise
 22 their religion, or seek redress of grievances. See id. at 618. The Court finds that Plaintiffs have
 23 failed to allege an injury to their First Amendment right of association.

1 Plaintiffs also fall short of identifying and articulating an injury to their right of family
 2 integrity. The cases Plaintiffs cite make clear that there must be a deprivation of the custody or
 3 control of a child, or a deprivation of the right to choose where one's children are educated. See
 4 Rivera v. Marcus, 696 F.2d 1016 (2d Cir. 1982) (removal of children from foster homes without
 5 due process); Duchesne v. Sugarman, 566 F.2d 817 (2d. Cir. 1977) (removal of children without
 6 due process); Roberts, 468 U.S. at 619 (identifying the "raising and education of children" as a
 7 protected right).¹ These cases track the principle that "the interest of parents in the care, custody,
 8 and control of their children—is perhaps the oldest of the fundamental liberty interests
 9 recognized by this Court." Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality opinion). And
 10 the Ninth Circuit has long explained that "[a] parent has a 'fundamental liberty interest' in
 11 companionship with his or her child." Rosenbaum v. Washoe Cnty., 663 F.3d 1071, 1079 (9th
 12 Cir. 2011) (quoting Kelson v. City of Springfield, 767 F.2d 651, 654–55 (9th Cir. 1985)). Here,
 13 Plaintiffs fail to allege how Sawant's comments deprived them of their ability to have custody or
 14 control of their children or to choose how to educate their children. Plaintiffs allege they
 15 "watched their families suffer," but there are no allegations that the family integrity was
 16 impacted. (TAC ¶ 64.) And although Plaintiff Miller alleges he had to move, he does not allege
 17 that Sawant's remarks interfered with this right to choose how his children were educated. (See
 18 TAC ¶ 65.) In full, the complaint states: "Detective Miller, whose children attended the Seattle
 19 School District, had to move." (See id.) He does not allege he changed their school or that
 20 Sawant's remarks was a proximate cause of that change. Even if he had, they would not show a

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 22 ¹ Plaintiffs also cite Singletown v. Cecil, 155 F.3d 983 (8th Cir. 1998), but this case is irrelevant.
 23 It examined whether a government employee had a due process right not to be terminated from
 24 an at-will position based on a conversation he had with his wife and daughter about bribing the
 chief of police. See id. at 986. The case has nothing to say about the right to familial integrity.

1 deprivation of the right to choose where his children were educated. These allegations, construed
2 in the light most favorable to Plaintiffs fail to show the deprivation of a right to family integrity.

3 The Court finds that Plaintiffs have not sufficiently pleaded a claim for defamation under
4 Section 1983 by failing to identify the deprivation of a constitutional right in addition to the
5 alleged defamation. See Wenger, 282 F.3d at 1074. The Court GRANTS the Motion and
6 DISMISSES this claim.

7 **D. Qualified Immunity Applies**

8 The Court also finds that even if Plaintiffs had alleged a claim for defamation under
9 Section 1983, it is barred by qualified immunity.

10 On a motion to dismiss, “qualified immunity protects government officials from liability
11 for civil damages ‘unless a plaintiff pleads facts showing (1) that the official violated a statutory
12 or constitutional right, and (2) that the right was clearly established at the time of the challenged
13 conduct.’” Wood v. Moss, 572 U.S. 744, 757 (2014) (internal quotation marks omitted) (quoting
14 Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011)). “These two prongs of the analysis need not be
15 considered in any particular order, and both prongs must be satisfied for a plaintiff to overcome a
16 qualified immunity defense.” Scott v. County of San Bernardino, 903 F.3d 943, 948 (9th Cir.
17 2018) (quoting Shafer v. County of Santa Barbara, 868 F.3d 1110, 1115 (9th Cir. 2017)).

18 As the first step, as explained above, Plaintiffs have not identified a violation of a
19 statutory or constitutional right. They fail to allege a “stigma plus” defamation claim under
20 Section 1983. They have not identified a violation of constitutional rights related to the
21 investigations and inquest. Nor have they identified a violation to their right of association or
22 family integrity. Sawant is thus entitled to qualified immunity at the first step.

1 As to the second step, Plaintiffs fail to identify a clearly established right that Sawant
 2 allegedly violated. This is fatal because the Supreme Court “has repeatedly told courts—and the
 3 Ninth Circuit in particular—not to define clearly established law at a high level of generality.”
 4 Kisela v. Hughes, ____ U.S. ___, ___, 138 S. Ct. 1148, 1152 (2018) (citation and quotation
 5 omitted). “Rather, the clearly established law at issue ‘must be particularized to the facts of the
 6 case.’” Foster v. City of Indio, 908 F.3d 1204, 1210 (9th Cir. 2018) (per curiam) (quoting White
 7 v. Pauly, 137 S. Ct. 548, 551 (2017) (per curiam)). In their Opposition, Plaintiffs do not cite a
 8 single case to identify the clearly established law that is particularized to the facts of the case.
 9 (See Opp. at 10.) In fact, their brief on this step of the qualified immunity analysis cites only a
 10 Second Circuit opinion speaking generally to the second step analysis, not the substance of the
 11 constitutional claim. (See id. (citing LaBounty v. Coughlin, 137 F.3d 68, (2d. Cir. 1998))).
 12 Plaintiffs nowhere formulate what the clearly established law is and how Sawant violated it.
 13 Plaintiff have therefore failed to meet their burden on the second step of this analysis.

14 Plaintiffs also suggest that qualified immunity cannot be granted because there is a
 15 dispute of fact as to whether Sawant’s “comments were part of her role as an elected official or
 16 not.” (Opp. at 6.) They argue that “Sawant has not even attempted to explain how her comments
 17 were part of her role as a City of Seattle Council member.” (Id. at 7.) As the Court has explained,
 18 if Sawant did not act as a councilmember, then Plaintiffs have no claim under Section 1983. She
 19 can only be sued if she made the comments as a councilmember. As such, Plaintiffs identify a
 20 self-defeating dispute of fact. But the Court accepts the pleadings, whose allegations sufficiently
 21 identify Sawant as having acted in her personal capacity as a councilmember in making the
 22 comments at issue.

The Court finds that Sawant is entitled to qualified immunity. This is an alternative basis on which the Court GRANTS Sawant's Motion.

CONCLUSION

The Court finds that Plaintiffs' federal defamation claim asserted under Section 1983 fails to satisfy the "stigma plus" test. Plaintiffs have not identified the deprivation of a constitutional right, which is necessary to the claim. The Court dismisses the claim under Rule 12(c). Additionally, the Court finds that Sawant is entitled to qualified immunity at both steps of the inquiry. Even if Plaintiffs had successfully pleaded a Section 1983 defamation claim, they have not articulated how Sawant violated clearly established law tailored to the facts of this case. As such, Sawant is entitled to qualified immunity. This is an additional and alternative ground on which the Court dismisses Plaintiffs' claim. The Court therefore GRANTS the Motion. The Court does not reach the alternative relief (summary judgment), as doing so is unnecessary to reach the dispositive issues.

Although Plaintiffs have not asked for leave to amend, the Court's dismissal is WITHOUT PREJUDICE. If Plaintiffs wish to amend their Section 1983 defamation claim, they must do so within 14 days of entry of this Order.

The clerk is ordered to provide copies of this order to all counsel.

Dated November 21, 2022.

Wesley P. Releman

Marsha J. Pechman
United States Senior District Judge